IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

OP.No. 4852 of 2003(C)

PETITIONER:

P.M.RAVIKUMAR, U.D.CLERK,
THUMPAMON GRAMA PANCHAYAT,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT, THIRUVANANTHAPURAM.**

2. **THE DIRECTOR OF PANCHAYATS, THIRUVANANTHAPURAM.**

3. **THE DEPUTY DIRECTOR OF PANCHAYATS, PATHANAMTHITTA.**

BY GOVERNMENT PLEADER SRI.NOBLE MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.8552/2003 AND I.A.NO.16438/2004 IN O.P.NO.4852/2003 C

DISMISSED

13/08/2007 **SD/- V.GIRI, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE LETTER DTD. 25/09/1999 WITH ENDORSEMENT DTD. 18/10/1989.**

EXT.P2: **COPY OF ORDER DTD. 28/03/1990 OF THE DIST.PANCHAYAT OFFICER, PATHANAMTHITTA.**

EXT.P3: **COPY OF LETTER DTD. 25/04/1990 FROM SPECIAL OFFICER, MUNICIPAL OFFICE, PANDALAM TO DIST. PANCHAYAT OFFICER, PATHANAMTHITTA.**

EXT.P4: **COPY OF THE ORDER DTD. 26/04/1990 OF THE DISTRICT PANCHAYAT OFFICER.**

EXT.P5: **COPY OF THE REPRESENTATION DTD. 27/12/1999 FROM THE PETITIONER TO 2ND RESPONDENT.**

EXT.P6: **COPY OF PROFORMA DTD. NIL OF THE PETITIONER.**

EXT.P7: **COPY OF ORDER DTD. 6/06/2000 OF THE 2ND RESPONDENT.**

EXT.P8: **COPY OF THE APPEAL DTD. 24/06/2000 BEFORE THE 2ND RESPONDENT BY THE PETITIONER.**

EXT.P9: **COPY OF THE ORDER DTD. 21/12/2002 OF THE 2ND RESPONDENT.**

/TRUE COPY/

P.S.TO JUDGE

KSS

V.GIRI, J.

O.P.No.4852 of 2003 C

Dated this the 13th day of August, 2007.

JUDGMENT

The petitioner, who entered service as a Bill Collector (Lower Division Clerk) in the Pathanamthitta District, was later promoted and became a Panchayat Assistant in 1985 and was promoted as Upper Division Clerk on 30.11.1987. Test qualification in relation to the post of Upper Division Clerk is Manual of Office Procedure and Account Test (Lower). Apparently, the petitioner acquired the said test qualification only in June, 1990. In the meanwhile, the petitioner was temporarily promoted as Upper Division Clerk with effect from 27.11.1987. While continuing in the said post, options were called for from persons in the Panchayat Common Service to be transferred to the Municipal Common Service. According to the petitioner, he gave such option and he would have become part of the Municipal Common Service but for the fact that the Pandalam Panchayat had been converted into Pandalam Municipality, prior to his joining the Pandalam Panchayat as Upper Division Clerk.

2. The petitioner contended that if the period of two years which is available in terms of Rule 13 A(i)(b) of Part I of the

Kerala Service Rules should be computed with reference to the date when he would have become part of the Municipal Common Service. He contended that if it is so computed, then the test qualification acquired by him in June, 1990 must be treated as having been acquired within time.

3. The claim made by the petitioner in this regard was not accepted by the Department finding that the petitioner has not acquired the qualification within 2 years commensurate to four chances. Hence the petitioner was reverted to the post of Lower Division Clerk. It is common case that the petitioner acquired the test qualification in June 1990 and later the petitioner was promoted as Upper Division Clerk.

4. The challenge made by the petitioner against the reversion resulted in O.P.No.24162/02 which was disposed of by this court by judgment dated 27.8.2002 requiring the Director of Panchayats to look into the petitioner's appeal. This resulted in Ext.P9 order, which is under challenge in this writ petition.

5. The petitioner, admittedly, was not test qualified for holding the post of Upper Division Clerk when he was actually promoted to that post in 1997. The petitioner had to pass the

test in two years commensurate to 4 chances during which period he could have acquired the qualification and claim eligibility for being promoted as Upper Division Clerk. The petitioner could not do so. He acquired the qualification only in June, 1990, beyond the period of 2 years. Naturally, reversion had to follow. Still later, the petitioner acquired the test qualification and he was promoted as Upper Division Clerk in which post he continued. The petitioner has still later been promoted as a Head Clerk.

6. The 2nd respondent has filed a counter affidavit justifying the reversion of the petitioner. The petitioner did not acquire the test qualification in the four chances which were available to him after his provisional promotion to the post of U.D.Clerk on 30.11.1987. The petitioner was thereafter promoted as U.D.Clerk on 16.2.1995. No junior to the petitioner was promoted as Head Clerk.

7. On hearing the learned counsel for the petitioner, Mr.Vinod Madhavan, the learned Senior Government Pleader and considering Ext.P9 order in the light of the provisions and the Rules, I am of the view that the petitioner cannot obviously claim a right to be promoted to the post of Upper Division Clerk prior to

his acquisition of the test qualification. The facility given to him under the Rules to acquire the same while occupying the promotion post provisionally is liable to be construed strictly. It is only to facilitate the incumbents to acquire the test qualification within two years. There is no rule which provides for extension of the time. If the test qualification is not acquired within time, the provisional promotion should be reviewed. That is what has been done in the present case. I do not find any error in Ext.P9.

In the result, writ petition is devoid of any merit. It is accordingly dismissed, but without any order as to costs.

Sd/-

(V.GIRI)

JUDGE

sk/

//true copy//

V.GIRI, J.

O.P.No.4852 of 2003

JUDGMENT

13TH AUGUST, 2007.